



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Agenda

Meeting of April 8, 2005

9:00 a.m., Commission Offices, 242 State Street, Augusta, Maine

ROUTINE BUSINESS

1. Ratification of minutes of October 30, 2004 meetings

NEW BUSINESS

2. Late Filing Penalty/House Democratic Campaign Committee

The Commission may wish to consider whether the House Democratic Campaign Committee (HDCC) filed an independent expenditure report one or two days late on Thursday, October 28, 2004 delaying the payment of matching funds. In response to a questionnaire, the HDCC stated that on Monday October 25, 2004 (eight days before the general election), it requested that the Copy Center in Augusta print and mail campaign literature as soon as possible. That day, it requested the total cost of the job and the breakdown of the cost among the candidates involved. The Copy Center did not supply the cost information until Wednesday, October 27, and the HDCC filed the independent expenditure report on Thursday, October 28. *Staff recommendation: the staff believes there are grounds for finding the party in violation for filing the report late. It may be reasonable to have expected the committee to file the report on October 27 when it received the cost information, or to have pressed the Copy Center harder for the information in time to file the report on October 26. Nevertheless, there are mitigating factors arguing against the assessment of a civil penalty.*

3. Late Filing Penalty/Maine Democratic Party

The Commission may wish to consider whether the Maine Democratic Party filed an independent expenditure report one day late, on Wednesday, October 27, 2004 delaying the payment of matching funds. In response to a questionnaire, the Maine Democratic Party stated that on Monday October 25, 2004, the party authorized its graphic designer, Ourso Beychok of Baton Rouge, Louisiana to print and mail literature in support of Democratic Senate candidates. Although the party was informed of the total cost of the job by telephone on Monday, October 25, the party apparently did not receive the invoice for the job with a breakdown among the candidates until Tuesday, October 26. The party filed an independent expenditure report on Wednesday, October 27. *Staff recommendation: based on the information provided to date, the staff believes there are grounds for finding the party in violation for filing the report late. The proofs of the literature and total price of the job were agreed to on October 25 but the report was not*

filed until October 27. Nevertheless, there are mitigating factors arguing against the assessment of a civil penalty.

4. Late Filing Penalty/SCICOM PAC

The Commission may wish to consider whether the SCICOM political action committee filed an independent expenditure report one day late, on Thursday, October 28, 2004 delaying the payment of matching funds. In response to a questionnaire, SCICOM stated that it authorized Spectrum Monthly to print campaign literature on Tuesday, October 26, but that SCICOM did not decide into which districts the literature would be mailed until Wednesday, October 27. It filed reports of the expenditures on Thursday, October 28.

Staff recommendation: the staff will make any recommendation at the April 8 meeting, after the presentation by SCICOM.

5. Adoption of Rules

On February 17, 2004, the Commission adopted for public comment amendments to its rules and candidate reporting form. On March 9, it proposed one additional rule requiring the disclosure of additional information for independent expenditures reported in the last seven days before an election. The Commission held a public hearing on the proposed amendments on March 24, and the deadline for written comments was April 4. The Commission will consider final adoption of the amendments.

Items 6 – 10: Late Filing Penalties/101% Reports

Traditionally financed candidates who have a Maine Clean Election Act (MCEA) opponent are required to file additional reports so that the Commission can determine whether the MCEA opponent is entitled to receive matching funds. In the 2004 elections, traditional candidates running for the House were required to file a 101% Report within 48 hours of when their receipts or expenditures for the general election exceeded \$4,072 (101% of \$4,032 – the amount which the MCEA opponent received for the general election). The prompt filing of the 101% Report is essential because it results in matching funds being paid to the MCEA opponent. In calculating the receipts for the general election, the traditional candidates were asked to include any unspent cash that the candidate had remaining after the June 8, 2004 primary election. In addition to the 101% Report, the traditional candidates are required to file “accelerated” reports on September 21, October 12, and October 21 stating the candidate’s total receipts and expenditures for the general election.

6. Late Filing Penalty/Edward R. Dugay

Representative Edward R. Dugay was a traditionally financed candidate for the Legislature in the 2004 elections. Based on the itemized contributions disclosed in his October 27, 2004 campaign finance report, the Commission staff has made the preliminary finding that he should have filed the 101% Report on October 1, 2004. Instead, Rep. Dugay filed the report on October 31, 2004 at the request of the Commission staff. Instead of filing the accelerated reports, on October 14 and October 22 he filed affidavits stating that his total receipts for the general election were less than \$4,072. These affidavits appear to be sworn statements containing false information. In particular, Rep. Dugay should have known the October 22 affidavit to be false because he

had raised more than \$7,000 between the June 8, 2004 primary election and October 22, 2004. Because of the late filing of the 101% Report and the misleading affidavits, his MCEA opponent, Christopher Cambron, did not receive \$1,916 in matching funds until the weekend before the general election. *Staff recommendation: because of the magnitude of the possible penalty and because the staff has not heard a response from Rep. Dugay, it intends to offer a recommendation at the April 8 meeting.*

7. Late Filing Penalty/Marc Lamontagne

Marc Lamontagne was a traditionally financed candidate for the Legislature in the 2004 elections. The Commission staff has made the preliminary finding that his receipts for the general election exceeded \$4,072 on October 29, 2004, and that he should have filed the 101% Report on November 1, 2004 – one day before the general election. No report was filed, so the Commission staff is recommending that the report be considered one day late. As a result of the late filing, his opponent, Boyd Marley, did not receive \$178 in matching funds to which he was entitled on November 1. *Staff recommendation: the Commission staff recommends the assessment of a civil penalty of \$178 for the late filing.*

8. Late Filing Penalty/Robert H. Crosthwaite

Representative Robert H. Crosthwaite was a traditionally financed candidate for the Legislature in the 2004 elections. The Commission staff has made the preliminary finding that his general election receipts exceeded \$4,072 on July 13, 2004 and that the 101% Report should have been filed on July 15. On July 16, 2004, Rep. Crosthwaite filed the 42-day post-election report which showed general election receipts of \$4,251.57, but he did not file the 101% Report until September 13, 2004. His opponent Dan Shaw received \$1,787 in matching funds on September 13, 2004. *Staff recommendation: the Commission staff recommends that the 101% Report be considered one day late, and that the Commission assess a civil penalty of \$218. The basis for the penalty is that the July 16 report provided the information required in the 101% Report (total general election receipts); Dan Shaw received all matching funds to which he was entitled on September 13, which provided him with an adequate time to spend the funds; and the 2004 election was the first election in which Rep. Crosthwaite was required to file a 101% Report as a traditional candidate.*

9. Late Filing Penalty/Arlan R. Jodrey

Rep. Arlan R. Jodrey was a traditionally financed candidate for the Legislature in the 2004 elections. The Commission staff has made the preliminary finding that his receipts for the general election exceeded \$4,072 on October 28, 2004, and that he should have filed the 101% Report on November 1, 2004 – one day before the general election. No report was filed, so the Commission staff is recommending that the report be considered one day late. His opponent, Timothy Carter, was not eligible to receive matching funds because of independent expenditures spent in the race in support of Mr. Carter. *Staff recommendation: the Commission staff recommends the assessment of a nominal penalty of \$50 for the late filing, because Rep. Jodrey should have filed the report regardless of the independent expenditures in the race.*

10. Late Filing Penalty/Brian M. Duprey

Representative Brian M. Duprey was a traditionally financed candidate for the Legislature in the 2004 elections. The Commission staff has made the preliminary finding that his receipts for the general election exceeded \$4,072 on October 29, 2004, and that he should have filed the 101% Report on November 1, 2004 – one day before the general election. No report was filed, so the Commission staff is recommending that the report be considered one day late. His opponent, Mary Poulin, was not eligible to receive matching funds because of independent expenditures spent in the race in support of Ms. Poulin. *Staff recommendation: the Commission staff recommends the assessment of a nominal penalty of \$50 for the late filing, because Rep. Duprey should have filed the report regardless of the independent expenditures in the race.*

11. Over-the-Limit Contributions Given by Affiliated Companies to Rep. Joseph Bruno

On July 21, 2004, Kevin Mattson and six real estate companies associated with him each donated \$250 to Joseph Bruno's campaign for State Senate. Under 21-A M.R.S.A. §1015-A, businesses that share the majority of members of their boards of directors or are owned by the same majority shareholder are treated as a single entity for purposes of the contribution limit. The Commission staff made the preliminary determination that four of the companies should be considered two contributors (each giving \$500) because of common ownership and directors. Mr. Mattson cooperated with the Commission staff by providing information regarding the contributors, and former Rep. Bruno cooperated by promptly returning the over-the-limit contributions. *Staff recommendation: the staff recommends a finding that Rep. Bruno, Zen Investment Holdings, and Harper's Development LLC violated the contribution limit of \$250 for the general election. No civil penalty may be assessed for this violation because the statute authorizing civil penalties for this violation was not in effect at the time of the contributions.*

12. Over-the-Limit Contribution Received by Thomas White

Thomas White was a candidate for Sheriff of Franklin County in the 2004 elections. He accepted contributions of \$300 (August 13) and \$500 (October 8) from the Wilton Town Republican Committee, which totaled a contribution of \$800 from the committee for the general election. Under 21-A M.R.S.A. §1015(2), Mr. White was allowed to accept only \$250 from the committee for the general election. *Staff recommendation: the Commission staff recommends that a civil penalty of \$100 be assessed against the candidate, and that a civil penalty of \$100 be assessed against the committee.*

13. Request for Waiver of Late Filing Penalty/John Weaver

John Weaver was the Green-Independent candidate for Senate District #5. Mr. Weaver filed all four required reports late on January 12, 2005 in response to letters stating that he was scheduled to be referred to the Attorney General. He had no activity during two of the reporting periods. The statutory penalties for the other two reporting periods are:

Deadline	Filed Date	# of Days Late	Activity for Period	Percentage	Penalty
June 2, 2004	Jan. 12, 2005	224	\$200	1%	\$448.00
Oct. 27, 2004	Jan. 12, 2005	77	\$157.50	5%	\$606.76
Total					\$1,054.76

Staff recommendation: Mr. Weaver has not presented any mitigating circumstances to justify the late filing. Nevertheless, because his campaign had only \$325 in receipts for the entire year, it might be appropriate to penalize the October 27 report at a rate of less than 5% so that the total assessed penalty is proportionate to the size of his campaign.

14. Request for Waiver of Late Filing Penalty/Mark Horton

Mark Horton was the Green-Independent candidate for House District #19. He filed all four reports late.

Deadline	Filed Date	# of Days Late	Activity for Period	Percentage	Penalty
June 2	July 1	29	\$456	1%	\$132.24
July 20	July 30	10	\$4,032	3%	\$1,209.60
October 27	October 28	1	\$644.06	5%	\$32.20
December 14	December 15	1	\$1,797.62	5%	\$89.88
Total					\$1,463.92

Staff recommendation: Mr. Horton has not presented any mitigating circumstances to justify the late filing. Nevertheless, it might be appropriate to penalize the July 20 late report at a rate of 1% because the only financial activity included in the June 2 and July 20 reports was his receipt of public funds which was otherwise disclosed to the public on the Commission's Web site.

15. Request for Waiver of Late Filing Penalty/Paul Madore

In the 2004 primary election, Paul Madore was a candidate for the Democratic nomination in Senate District #16. He did not win the primary. He was required to file a post-election report on July 20, 2004. The report was filed on July 23, 2004. The candidate states that he filed the report late because he was attempting to get advice from the Commission staff, and the candidate's wife has said that she attempted to file the report electronically before the July 20 deadline but had difficulties. The Commission's e-filing system cannot confirm this. The statutory penalty is \$116.34. *Staff recommendation: the Commission should reduce the penalty by 50% and assess a penalty of \$58.17, because the candidate was not late previously in 2004.*

16. Referral to Attorney General/Mathew Gagnon

Staff recommendation: the Commission staff recommends referring Matthew Gagnon to the Attorney General to collect a \$1,800 civil penalty. Matthew Gagnon was the Republican candidate for House District #14. He filed the 6-day pre-primary report on June 1 (one day early). He did not file campaign finance reports until January 10, 2005, and the reports were filed in response to letters stating that he would be referred to the Attorney General. The report shows that he had \$800 in receipts for the entire campaign. On January 18, 2005, the Commission staff sent him a letter informing him that the statutory penalty was \$1,800, and requested that he pay the penalty within 30 days or request a waiver. He did neither. On February 25, 2005, the Commission staff sent him a "final notice" that he would be referred to the Attorney General for collection of the penalty. Mr. Gagnon has not responded to either letter. Title 21-A M.R.S.A. §1020-

A(10) states that thirty days after it issues a notice of penalty, the Commission shall report to the Attorney General the name of any person who has failed to pay the full amount of the penalty.

17. Request for Waiver of Penalty for Late Annual Lobbyist Report/Jill Duson

In the 2004 legislative session, Jill Duson was the registered lobbyist for Planned Parenthood for Northern New England. Like all lobbyists, Ms. Duson was required to file an annual report by December 30, 2004 summarizing all lobbying activities during the lobbying year ending November 30, 2004. In June 1, 2004, Christopher Quint replaced Ms. Duson as the Director of Public Affairs for the organization. He was unaware that Ms. Duson was required to but had not filed an annual report. He filed the report on January 3, 2005, four days late. The statutory penalty for the late filing is \$200. *Staff recommendation: because Ms. Duson was not previously late in filing a report and because of turnover in her position, the staff recommends a 50% reduction and the assessment of a \$100 penalty.*

18. Request for Waiver of Penalty for Late Annual Lobbyist Report/Betsy Smith

In 2004, Betsy Smith was the lobbyist for Equality Maine. She first became a registered lobbyist in March 2004. She was required to file an annual report by December 30, 2004. The report was filed on January 4, 2005, five days late. Ms. Smith states that because she was a new lobbyist, she was unaware of the requirement to file an annual report. The statutory penalty is \$200. *Staff recommendation: because Ms. Smith was not previously late in filing a report, the staff recommends a 50% reduction and the assessment of a \$100 penalty.*

Other

Miscellaneous as needed.

EXECUTIVE SESSION

If necessary.

ADJOURNMENT